

Notice of Allowability

Application No.

10/825,046

Examiner

Melissa A. McCorkle

Applicant(s)

MACKOOL, RICHARD J.

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment after Non Final dated 08/25/2006.
2. ☒ The allowed claim(s) is/are 1-5 and 12.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Hess on November 17, 2006.

The application has been amended as follows:

In claim 1, line 11-

"barrier against exposure of the aspiration tube to contamination."

has been changed to

--barrier against exposure of the aspiration tube to contamination, the sterile tubular sheath being secured to either an end of the aspiration tube in close proximity to the port, or the port of the console.--

In claim 2, line 5-

"cassette than the distal end of the aspiration tube, the location where the sterile,"

has been changed to

--cassette than the distal end of the aspiration tube, a location where the sterile,--

In claim 5, line 1-

Art Unit: 3763

“A sterilized barrier apparatus of claim 1, wherein the surgical”

has been changed to

--A sterilized barrier apparatus of claim 1, wherein a surgical--

Reasons for Allowance

2. The following is an examiner's statement of reasons for allowance: the subject matter of the independent claim could either not be found or was not suggested in the prior art of record. The subject matter not found was a sterile tubular sheath, an extension tube, an instrument console with surgical pack including an aspiration tube, the sterile tubular sheath being secured at one end to the extension tube and the other end at either the console port or the aspiration tube near the port, substantially as claimed.

3. The closest prior art of record is US Patent Number 5,741,226 issued to Strukel et al. Strukel discloses a Phacoemulsification Handpiece, Sleeve, and Tip. Strukel does not disclose the collapsible sleeve connected to or near either the aspiration tube or port, and further is not connected to the extension tube. Strukel's sleeve teaches away from the current invention by not enabling reuse of the aspiration needle without the need for sterilization. Strukel does not disclose a sterile tubular sheath, an extension tube, an instrument console with surgical pack including an aspiration tube, the sterile tubular sheath being secured at one end to the extension tube and the other end at either the console port or the aspiration tube near the port, substantially as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

Art Unit: 3763

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Melissa A McCorkle
Examiner
Art Unit 3763